IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

FAO No. 199 of 1999.

Judgement reserved on:

Date of decision : April 5, 2006.

Smt. Rukko …….. Appellant.

Versus

Shiv Ditta ……. Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting? No

For the appellant: Mr. N. K.Thakur, Advocate.

For the respondent:

Surjit Singh J. (Oral).

Appellant is aggrieved by the judgement and decree of the District Judge, whereby her petition under Section 13 of the Hindu Marriage Act, for dissolution of marriage by a decree of divorce, on the grounds of cruelty and desertion has been dismissed. Therefore, she has come in appeal to this Court.

Facts relevant for the disposal of the appeal may be summed up thus. Petitioner- appellant filed a petition under Section 13 of the Hindu Marriage Act, seeking dissolution of her marriage with respondent alleging that her marriage with the respondent had taken place about 16 years back and that out of

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Whether reporters of local Papers may be allowed to see the judgment? Yes

their bed-lock, five children were born. She further alleged that five-six years after the marriage, respondent started giving beatings to her and that finally in March, 1996, he gave her severe beating and also dealt a blow of Drati and threw her out of the matrimonial home and ever since she had been residing at her sister's place. It was also alleged that respondent had not provided any maintenance to her after turning her out of the matrimonial home.

Respondent denied the allegations and alleged that as a matter of fact the respondent herself left the matrimonial home and had been living with one Piar Singh of village Kuther.

Learned District Judge framed issues based on the grounds on which the appellant sought dissolution of the marriage and recorded the evidence of the parties and ultimately returned the findings that the appellant had failed to prove the grounds of cruelty and desertion. Petition was, therefore, dismissed.

In the grounds of appeal, it is alleged that the learned District Judge has not appreciated the evidence correctly. Learned counsel for the appellant submitted that the making of the allegation of adultery by the respondent itself amounted to cruelty and hence the appellant was entitled to decree of dissolution of marriage.

Having heard the learned counsel for the appellant (respondent is ex-parte) and having gone through the record, I find no substance in the contention that the allegation of adultery made by the respondent itself amounts to cruelty. The evidence on record shows that the allegation is not false. Respondent entered the witness box and testified in no uncertain terms that the petitioner-appellant had been living with one Piar Singh of village Kuther and that on his application, a warrant of search under

Section 97 of the Code of Criminal Procedure, was issued and in execution of that warrant petitioner- appellant was produced in the court of S.D.M. after having been recovered from the house of Piar Singh and that though to the S.D.M. the appellant stated that she was willing to go with the respondent, yet on coming out of the court of S.D.M. she went with Piar Singh. This part of the statement of respondent has remained unchallenged. Not only this, the statement of the respondent is corroborated by two witnesses, namely RW 2 Hari Dass and RW 3 Thoglia Ram Thakur, both of whom have stated that the petitioner- appellant has been residing with one Piar Singh for the last two and half years. No specific suggestion was put to either of the two witnesses that appellant had not been residing with Piar Singh.

Now, if the allegation of the respondent that the appellant has been living with one Piar Singh as his wife is true, as the above discussed evidence suggests that it is the same cannot be said to amount to cruelty. It would have amounted to cruelty if the same were false or untrue.

No other point was urged.

In view of above stated position, the appeal is dismissed.

April 5, 2006. **(Surjit Singh),**
(Hem) **Judge.**